IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7528 OF 2005

Transport and Dock Workers Union ... Petitioner

Versus

State of Maharashtra and Ors. ...Respondents

Mr.Anand Grover, instructed by Mr. Prakash Mahadik for the petitioner.

Mr. C.R. Sonawane, Assistant Government Pleader, for respondent No.1.

Mr. A.V.Chatuphale for respondent No.2.

Mr. M.S. Topkar for respondent No.8.

CORAM: **KSHITIJ R. VYAS, C.J.** &
DR. D.Y. CHANDRACHUD, J.
DATE: **MARCH 13, 2006**.

P.C.

The petitioner is a Trade Union registered under the Trade Unions Act, 1926, and represents the mathadi workers working at the depots of the Maharashtra State Warehousing Corporation, respondent No.2 herein and the State of Maharashtra, respondent No.1, having their depots at Aurangabad, Srirampur and Satara.

2. By this petition, the petitioner Union is, *inter alia*, seeking the cancellation of a tender notice dated 11th October, 2005, at Exhibit-D.

Due to floating of the tenders, according to the petitioner, the contractor may throw out the workers, who are members of the petitioner union, working for the last more than 15 years continuously at the concerned depots. It is the contention of the petitioner that even on assumption that the work done by the members of the petitioner union is that of mathadi nature, there can be no intermediaries between the Board and the Corporation and, therefore, the question of floating tenders for contractors does not arise at all. The petitioner has, therefore, prayed for quashing and setting aside the tender notice dated 11th October, 2005, Exhibit-D to the petition. Without prejudice to the said prayer, the petitioner has also prayed for an appropriate writ, order or direction directing the respondents to employ the workers at Exhibit-A to the petition for the work of handling and transportation at the depots/godowns of the respondent-Corporation with a further order prohibiting respondents from employing any other workers for the said work.

3. During the course of the hearing, it has been brought to our notice that respondent No.2, Maharashtra State Warehousing Corporation, has not registered itself with respondent Nos. 6, 7 and 8 which are the Boards for Aurangabad, Shrirampur and Satara

constituted under the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969, hereinafter referred to as “the Act. In view of the definition in Section 2 (3) of the said Act, respondent No. 2 is the “employer” of the mathadi workers who are members of the petitioner Union. Surprisingly, respondent No.2 is not registered despite the obligation contained in the scheme particularly clauses 14, 20 and 30 of the scheme framed under the said Act.

4. The Supreme Court in *Maharashtra Rajya Mathadi Transport and Central Kamgar Union* vs. *State of Maharashtra and others,* (1995 II CLR 217) has observed thus:

> “As stated above by the High Court 'Hundekaris' are persons who engage mathadi workers (unprotected workers) in the scheduled employment. This statement of the High Court is not controverted by the learned counsel for the appellant and indeed it gives no room for controversy. But, when a 'Hundekari' engages mathadi workers (unprotected workers) for executing the work of an establishment over which he has no ultimate control or the affairs of which are not entrusted to him he would be a contractor within the meaning of Section 2 (2) of the Act and not an employer who either engages unprotected workers by or through a contractor in the scheduled

> employment or who has ultimate control over the affairs of the establishment or to whom the affairs of the establishment are entrusted within the meaning of Section 2 (3) of the Act."

In view of the above observations of the Hon'ble Apex Court, the practice adopted by respondent No.2 is contrary to the provisions of the Act and the scheme framed thereunder.

5. The learned counsel appearing for respondent No.2 states that within two weeks from today, the said respondent shall apply for registration with respondent Nos. 6, 7 and 8 as the case may be. The learned counsel appearing for respondent No.8 states that on receipt of the said request from respondent No.2 for registration, the same shall be processed and respondent No.2 shall be registered within two weeks from the date of receipt of the application. Since nobody is appearing on behalf of respondent Nos. 6 and 7, we direct the said respondents to process the applications that may be received from respondent No.2 and to register it within a period of two weeks from the date of receipt of the application for registration.

6. Till the completion of the aforesaid exercise of respondent

No.2 being registered with respondent Nos. 6, 7 and 8 and the allotment being made by the said respondents to the second respondent, the services of the existing mathadi workers, who are members of the petitioner union shall not be disturbed. In other words, the service conditions of the mathadi workers shall not be changed in any manner. Respondent Nos. 6, 7 and 8 shall allot the mathadi workers to respondent No.2 in accordance with the requirement of work, bearing in mind the seniority of such workers.

7. In view of the above, nothing further requires to be done in the petition. The petition stands disposed of accordingly. There shall be no order as to costs.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.